

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Curly top virus is an extremely serious plant virus affecting many commercial crops in California. The only known vector of this virus is the sugar beet leafhopper, Circulifer tenellus (Baker). Curly top virus is highly destructive to commercially produced sugar beets, tomatoes, peppers, cucumbers, muskmelons, watermelons, squash, pumpkins, green and dry beans, spinach and varieties of vine seed. The sugar beet leafhopper (BLH) is both resident and migratory. Populations develop in selected habitats within the San Joaquin, Imperial, Sacramento and intracoastal valleys of California and in contiguous states and Mexico.

The Curly Top Virus Control Program's objective is to reduce the incidence of curly top virus infection in susceptible crops below a level of economic importance (an economic threshold of five percent) through the use of integrated pest management techniques. The program utilizes intensive surveying to locate and monitor BLH populations throughout the year. Once the populations are located, they are evaluated as to the amount of virus, potential for migration to susceptible crops in the area, feasibility of control versus natural mortality due to parasites and predators or weather trends affecting host plants.

The general pest control strategy of the Curly Top Virus Control Program is to:

1. Reduce the potential number of over wintering female BLH through the use of insecticide on selective Russian thistle (a weedy BLH host) stands in the early fall.
2. Further reduce surviving gravid over wintering BLH females, prior to egg deposition, once they have concentrated on winter host plants.
3. Selectively treat areas of habitat where a spring population has developed, to prevent migration to crops during late spring and early summer.

This program has been funded by the general fund (unclaimed gas tax) and by assessments collected from producers and producer-handlers of crops susceptible to curly top virus in the four assessment districts. The distribution of funds from the unclaimed gas tax is directed to competing and qualifying state and local agencies to augment their budget needs. As a result of the State's current budget crisis, this program cannot count on obtaining any future unclaimed gas tax funds. The Curly Top Virus Control Board is advisory to the Secretary of Food and Agriculture and may make recommendations on matters pertaining to beet leafhopper control, including, but not limited to the annual Curly Top Virus Control Program budget, use of funds for research, regulations, and necessary assessments. The Board reviewed the Fund Condition Statement for the program and determined the actual total combined ending reserves for 2000/2001 were \$1,590,308 but have subsequently decreased significantly to \$935,402 for 2002/2003. Additionally, based upon the proposed Board approved budgets through 2005/2006, for that fiscal year there will be a total operating reserve of \$219,027 remaining. The Board determined that this level of reserve would maintain program operations for less than two months and was unacceptable. As a result, at its March 30, 2004 meeting, the Board passed a motion to recommend to the Secretary that the assessment fees be increased by 20 percent, with the provision that this increase be completed as an emergency regulation change. This increase in the assessments is necessary to enable the program to maintain its current level of effectiveness and build the reserve funds to an acceptable level during continued operations. Under existing law, the Secretary shall accept the recommendations of the board if the Secretary determines that the recommendations are practicable and in the interest of the industry and the public. The Department approved the recommendation by the Board on April 7, 2004.

Therefore, it is necessary to amend Section 3601(g) to increase the assessment fees for control of beet leafhoppers for all crops in all districts to ensure the program's continued operations and effectiveness. To enable producers and producer-handlers to benefit as soon as possible from the increase assessments, the assessments should be increased at the earliest feasible date. To have the increased assessment fees in effect for the entire 2004/2005 fiscal year it is necessary to amend Section 3601(g) effective July 1, 2004. To

enable producers and producer-handlers to plan and arrange for the collection and payment of the increased rate, the proposed changes in the regulations should be approved as soon as possible. This should also prevent the under payment of assessments by industry that would necessitate the costly issuance of additional payment notices due by the Department. Therefore, it is necessary to amend this regulation as an emergency action to be effective July 1, 2004.

Authority and Reference Citations

Authority: Sections 407, 6034, and 6036, Food and Agricultural Code.

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Informative Digest

Existing law provides that controlling beet leafhopper, the only known vector of the curly top virus, is in the public benefit; establishes four assessment districts consisting of all or portions of specified counties; provides that producers or producer-handlers of specified crops shall pay an assessment to the Secretary of Food and Agriculture as specified; provides that additional areas of the State may be established in districts by regulation; and provides the rate of assessment may be established by district and crop and shall be set by regulation (Food and Agricultural Code, Sections 6031, 6034, 6035 and 6036).

Section 3601(g), Assessments for Control of Beet Leafhopper.

The proposed amendment of Section 3601(g) will increase the assessment rates per ton for all crops susceptible to curly top virus in all four control districts by 20 percent as recommended by the Curly Top Virus Control Board. The effect of the change in the regulation is to provide authority for the State to collect an assessment that is 20 percent greater per ton of susceptible crops than the existing assessment to ensure the curly top virus control program continued operations at its present level of effectiveness.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts.

Cost Estimate

The Department also has determined that no savings or increased costs to any state agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.